IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO.553 OF 2006

IN

SUMMARY SUIT NO.376 OF 2002

...

Nagesh Mangesh Aversekar ...Plaintiff

v/s.

Velji Gunsi Shah ...Defendant

...

Mr.V.K.Damle for the Plaintiff.

Mr.I.P.Bagaria for the Defendant.

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CORAM: D.K.DESHMUKH, J.

DATED: 23RD JANUARY,2007

P.C.:

1. The Plaintiff has filed this suit on the basis of the promissory note executed by the Defendant for Rs.1,50,000/- (Rupees One lakh Fifty Thousand). The Defendant admittedly has been served with the summons

for judgment on 26-10-2006. Within the period allowed by Order XXXVII of CPC no application for leave to defend has been filed. The Defendant, therefore, is not entitled to any leave to defend. Therefore, in terms of the provisions of Order XXXVII of the CPC, the Plaintiff is entitled to judgment.

2. The learned counsel for the Defendant submits that according to averments in the plaint itself the Plaintiff has filed the complaint under the Maharashtra Protection of Interests of Depositors (in Financial Establishments) Act, 1999, and therefore in view of the provisions of Section 6 of that Act this suit cannot proceed.

3. Perusal of the order passed by this court in this very suit dated 6-11-2003 shows that in the proceedings under the MPID Act 1999 the case of the Defendant is that the Plaintiff is not entitled to protection of that Act. In any case perusal of provisions of that Act shows that in order to attract application of that act, amount must be given on deposit. The suit of the Plaintiff is based on a promissory note whereby a loan was given by the Plaintiff to the Defendant. In my opinion,

therefore, I do not see that the jurisdiction of this court to entertain this suit is barred by any law.

4. I have heard the learned Counsel for the Plaintiff. I have also perused the record. As the Defendant is not entitled to leave to defend, the Plaintiff's suit has to be decreed. Summons for judgment is, therefore, granted. Suit of the Plaintiff is decreed in terms of prayer clauses of the suit. Refund of court fees as per rules.

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